CHIN CHOY & ORS.

v.

THE COLLECTOR OF STAMP DUTIES

PRIVY COUNCIL
LORD WILBERFORCE
LORD FRASER OF TULLYBELTON
LORD ROSKIL
NINIAN STEPHEN
[APPEAL NO. 26 OF 1979]
8 JUNE 1981

REVENUE LAW: *Stamp duty - Valuation for duty - Market Value - Effective date - Assessment to be made on date of execution of sale/purchase agreement or as at date of transfer Form 14A - Stamp Ordinance 1949, s. 12A, 39(2).*

The appellant on 30 October 1971 executed a sale/purchase agreement with a developer to buy certain property in Kuala Lumpur for the purchase price of RM49,000. That agreement was properly stamped for RM1 in accordance with item 4 of the First Schedule to the Stamp Duty (Special Provisions) (Malaysia) Act 1967.

On 26 June 1973 the developer executed a memorandum of transfer in Form 14A over the said property so previously agreed to be sold by the said agreement to the appellant for the purpose of transferring the legal title of the said property to the appellant.

The memorandum of transfer was submitted to the Collector of Stamp Duty together with a copy of the stamped agreement, the relevant information required by s. 5 of the Stamp Ordinance 1949 and *ad valorem* stamp duty of RM490 being 1 per cent of RM49,000 the consideration stated in the memorandum of transfer.

The Valuation Officer however valued the said property as at 26 June 1973 being the date of the transfer Form 14A at RM65,000 and accordingly the Stamp Duty payable was assessed at RM650 being 1 per cent of RM65,000.

The appellant thereupon paid the difference of RM160 but subsequently filed a notice of appeal against the assessment and a case was stated for the opinion of the Court pursuant to s. 39(2) of the Stamp Ordinance 1949.

On the 3 June 1977 Abdul Hamid J upheld the assessment made by the respondent. An appeal against the decision of Abdul Hamid J. to the Federal Court was dismissed on 22 March 1978. Leave to appeal to the Privy Council was granted by the Federal Court on 6 November 1978.

In their Lordships' view the issue raised by this appeal turns upon the true construction of s. 12A of the Stamp Ordinance 1949 as amended by the Stamp (Amendment) Act 1967. The side note of the section reads: "Assessment of the value of property under transfer or settlement".

The principal submission for the appellant was that in the context of s. 12A the words in para. (b) "the market value, as on the date of execution, of the property transferred or settled", must be construed as referring to the execution of the sale and purchase agreement dated 30 October 1971 and **NOT** to the memorandum of transfer dated 26 June 1973 by which time the value of the property in question had substantially appreciated.

The learned Counsel also contended that the effect of the agreement of 30 October 1971 was to transfer the equitable title of the property to the appellant notwithstanding that the legal title could only be transferred by registration in accordance with the National Land Code.

Held:

[1] The provisions in para. (b) of s. 12A cannot be divorced from the opening words of the section which refer expressly to "transfer or settlement" as does para. (a) of the section although the language of para. (b) does not include any express reference to a memorandum of transfer.

[2] The context in which the language in para. (b) is used is one expressly related to instruments of transfer by means of which legal title to the property will be transferred to the purchaser.

[Appeal dismissed with costs.]

Cases referred to:

Christopher Brown Limited v. Genossenschaft Oester reichischer [1954] 1 QB 8
Lewisham London Borough Council v. Lewisham Juvenile Court Justices [1980] AC 273
Fothergill v. Monarch Airlines [1980] 2 All ER 698

Legislation referred to:

Civil Law Ordinance 1956, s. 6
Stamp Duty (Special Provisions) (Malaysia) Act 1967, First Schedule
Stamp Duty (Remission) Order 1979, s. 2
Stamp Ordinance 1949, ss. 5, 12A, 39(2)

For the appellant - Paramjit Singh Gill; M/s. Philip Conway Thomas & Co.
For the respondent - S.T. Bates QC (S.J. Allcock with him); M/s. Stephenson Harwood

JUDGMENT

Lord Roskill:

Though these appeals are 23 in number, it is common ground that each raises the same question regarding liability to *ad valorem* stamp duty chargeable in accordance with s. 12A of the Stamp Ordinance 1949 of the Federation of Malaya, as amended by the Stamp (Amendment) Act 1967, of Malaysia, and that the decision of their Lordships, as of the Courts below in a single appeal, will determine all the appeals. Their Lordships are therefore concerned only with the appeal of the fourth appellant ("the appellant") who on 30 October 1971 executed a sale and purchase agreement with a developer to buy certain property in Kuala Lumpur for the purchase price of RM49,000. That agreement was properly stamped for RM1 in accordance with item 4 of the first schedule to the Stamp Duty (Special Provisions) (Malaysia) Act 1967.

On 26 June 1973 the developer executed a memorandum of transfer of the property so previously agreed to be sold to the appellant. That memorandum of transfer was in Form 14A and in all respects complied with the relevant requirements of the National Land Code for the purpose of transferring to the appellant the legal title to the property which he had previously agreed to buy. Indeed that legal title could be obtained only by registration in accordance with the provisions of that Code.

This memorandum of transfer was submitted to the respondent, together with a copy of the stamped agreement, the relevant information required by s. 5 of the Stamp Ordinance 1949 and *ad valorem* stamp duty of RM490 being 1 percent of RM49,000, the consideration

stated in the memorandum of transfer. The respondent however assessed the market value of the property as at 26 June 1973 at RM65,000 and accordingly assessed the stamp duty payable at RM650, being 1 percent of RM65,000. The appellant thereupon paid the difference of RM160. Notice of appeal was subsequently filed against this assessment and a case was stated for the opinion of the Court pursuant to s. 39(2) of the Stamp Ordinance 1949.

On 3 June 1977 Abdul Hamid J upheld the assessment made by the respondent. An appeal by the appellant and others to the Federal Court was dismissed on 22 March 1978. Leave to appeal was granted by the Federal Court on 6 November 1978.

In their Lordships' opinion the issue raised by this appeal turns upon the true construction of s. 12A of the Stamp Ordinance 1949 as amended by the Stamp (Amendment) Act 1967. That section which bears the side note "Assessment of the value of property under transfer or settlement" reads thus:

> 12A. For the purpose of assessing the value of any property which is the subject of a transfer or settlement, such value shall be taken to be:
>
> (a) the money value, if any, mentioned in the instrument of transfer as the consideration for the transfer or settlement; or
>
> (b) the market value, as on the date of execution, of the property transferred or settled, whichever be the greater;
>
> Provided that the officer before whom the instrument of transfer is tendered for registration may accept the consideration mentioned therein as being the market value, unless he shall have reason to believe otherwise.

The principal submission for the appellant was that in the context of s. 12A the words in para. (b) "the market value, as on the date of execution, of the property transferred or settled," must be construed as referring to the execution of the sale and purchase agreement dated 30 October 1971 and not to the memorandum of transfer dated 26 June 1973 by which time the value of the property in question had substantially appreciated. "Execution", it was said, was a word capable of bearing several meanings. In this context there was an ambiguity in its use and that ambiguity should be resolved in favour of the taxpayer and not the respondent. Their Lordships do not doubt that the word "execution" can bear different meanings according to the context in which the word is used. In the context in which the word was used in *Christopher Brown Ltd. v. Genossenschaft Oester reichischer* [1954] 1 QB 8 Devlin J, as he then was, thought its use ambiguous. But ambiguity in one context does not of necessity involve that its use in another and widely different context is also ambiguous. In their Lordships' view, as already stated, everything turns upon the context.

Much emphasis was laid by learned Counsel for the appellant in his argument upon the existence in Malaysia of the Torrens system and upon the differences between that system and conveyancing practice in England. Nonetheless learned Counsel also contended that the effect of the agreement of 30 October 1971 was to transfer the equitable title of the property to the appellant notwithstanding that the legal title could only be transferred by registration in accordance with the National Land Code. The respondent was prepared to concede that the equitable title was transferred on that date and in that manner. However, the principle that once a valid contract for sale is concluded the vendor becomes in equity a trustee for the purchaser of the estate sold is a peculiarity of English land law. But s. 6 of the Civil Law Ordinance 1956 of the Federation of Malaya expressly provides that

nothing in that part of that statute should be taken to introduce into the Federation "any part of the Law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein". It is not, however, necessary for their Lordships further to pronounce upon this question in the present appeal.

Learned Counsel for the appellant invited their Lordships' attention to the text of the bill which led to the enactment of the Stamp (Amendment) Act of 1967 and thus to the introduction of s. 12A. His purpose in so doing was to draw attention to the relevant part of the explanatory statement dealing with what became s. 12A of that Act. That relevant part stated that this provision was designed to prevent evasion by "the common practice of under-valuing the property by showing a false consideration, less than the true consideration, in the instrument of transfer". Learned Counsel asserted that this was mischief at which the new provision was aimed and accordingly the section should not be construed as having a wider effect than was necessary in order to achieve that stated purpose. Their Lordships are quite unable to accept this reasoning. Even if it were permissible to have regard to this part of the explanatory statement for the purpose of construing the section, its existence could not properly be used to give to the words of the statute a more restricted meaning than that which those words naturally bear upon their true construction. It by no means follows that because the relevant provision was aimed at one particular target its effect may not have been more far-reaching.

The submission for the appellant, in their Lordships' view, involves reading into para. (b) of s. 12A words which are not to be found in that paragraph. For the paragraph to bear the meaning contended for it would have to read:

> market value, as on the date of the execution of the agreement of sale, or, if there be no such agreement of sale, of the memorandum of transfer of the property transferred or settled.

Their Lordships can find no justification for so drastically rewriting this paragraph. The language of para. (b), it is true, does not include any express reference to a memorandum of transfer. But its provisions cannot be divorced from the opening words of the section which refer expressly to "transfer or settlement" as does para. (a) of the section. Accordingly, it seems to their Lordships clear that the context in which the language of para. (b) is used is one expressly related to instruments of transfer by means of which legal title to the property will be transferred to the purchaser. It follows that, in complete agreement with the Courts below, their Lordships are unable to find any ambiguity in the use of the word "execution".

Learned Counsel for the appellant also relied upon the provisions of s. 2 of the Stamp Duty (Remission) Order 1979 made on 19 April 1979. Their Lordships were informed by Counsel that the purpose of this provision was to reverse the effect of the decision of the Federal Court in the instant appeal. It was argued that the existence of this Order showed that the intention of the Legislature in enacting s. 12A must have been to limit the incidence of liability in the manner contended for by the appellant. In their Lordships' view it is quite impermissible to construe s. 12A by reference to this later amending order. See *Lewisham London Borough Council v. Lewisham Juvenile Court Justices* [1980] AC 273 **per** Viscount Dilhorne at p. 282:

> The meaning of an unamended section of the earlier Act is not altered by amendments made by the later one.

See also *Fothergill v. Monmarch Airlines* [1980] 2 All ER 696 at pp. 711 and 721.

In the result their Lordships find themselves in complete and respectful agreement with the conclusions reached in both Courts below and will advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

Also found at [1981] CLJ 37